Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	WC Docket No. 03-109
	)	
Lifeline and Link-Up	)	DA No. 07-1241

REPLY COMMENTS OF THE NEW JERSEY PUBLIC ADVOCATE DIVISION OF RATE COUNSEL ON BEHALF OF NEW JERSEY RATEPAYERS

RONALD K. CHEN,
NEW JERSEY PUBLIC ADVOCATE

KIMBERLY K. HOLMES,
ACTING DIRECTOR,
DIVISION OF RATE COUNSEL
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
Phone (973) 648-2690
Fax (973) 648-2193
njpublicadvocate.gov.

On the Comments:

Christopher J. White, Esq.
Deputy Public Advocate
Maria T. Novas-Ruiz, Esq.
Assistant Deputy Public Advocate

Date: September 10, 2007

I. INTEREST OF THE DIVISION OF RATE COUNSEL

The Division of Rate Counsel ("Rate Counsel") is a division within the Department of the New Jersey Public Advocate. Rate Counsel is a New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to the Rate Counsel's continued participation and interest in implementation of Lifeline/Link-Up framework under Section 254 of the Communications Act of 1934 ("the Act"), as amended by the Telecommunication Act of 1996 ("the 1996 Act"),[1] on behalf of New Jersey's senior and low-income consumers/ratepayers.

II. INTRODUCTION

The New Jersey Division of the Rate Counsel ("Rate Counsel") submits these reply comments in the above-captioned proceeding. It comes as no surprise that a review of the initial comments filed by the respective parties in response to the Commission's request to refresh the record with respect to the 2004 *Report and Order and Further Notice of Proposed Rulemaking* ("*FNPRM*")[2] reveals a glaring dichotomy. On the one hand, state public utilities commissions, consumer advocates and consumer organizations, urge the Commission to impose regulations requiring automatic enrollment, increase of the income-based criterion from 135% to 150% of

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("the 1996 Act"). The 1996 Act amended the Communications Act of 1934 ("the Act").

[2] *In the Matter of Lifeline and Link-Up, Further Notice of Proposed Rulemaking,* WC Docket No. 03-109, FCC 04-87.

the Federal Poverty Guidelines ("FPG") and for the Commission to impose on eligible telecommunications carriers ("ETCs") federal minimum requirements or guidelines governing advertisement to promote the Lifeline and Link-Up programs. On the other hand, ETCs, the group which would be most impacted by new federally mandated requirements, want to keep the *status quo*, and urge the Commission *not* to expand the income-based criterion of the programs, nor mandate automatic enrollment, and to continue to provide general guidelines for outreach programs rather than provide specific federal minimum requirements for carriers and states to follow.[3] ETCs argue that specific outreach activity requirements such as language and/or specific advertising mandated by the Commission may be inappropriate to the characteristics of the low income population in particular areas and would prove costly, ineffective and therefore, inefficient.[4] Moreover, one ETC argues that "[T]he costs of outreach, should be borne by the federal universal service fund ("USF") not the carriers,"… especially "in the case of mandatory outreach … requiring specific activities."[5] Therefore, ETCs argue that the Commission should continue to encourage and foster cooperation between the telecom providers and state agencies,

---

3 U.S. Telecom, Comments at p. 5, dated August 24, 2007; "There is no evidence that increasing the Lifeline eligibility requirements would materially improve low-income consumers' access to telecommunications services."

Embarq Corp., Comments at pp. 1-2, dated August 24, 2007, stated that "based on its experience, the Commission should retain the current income-based eligibility of 135% of FPG because increasing the income level for eligibility would not be an effective way to accomplish the Commission's goals to make telephone service more affordable to low income customers by facilitating Lifeline participation."

4 Qwest Communications International, Inc., Comments at p. 1 stated that "Outreach for these government-created programs will be most effective when it is done through the public agencies that already have contacts with the consumers who are eligible for these programs."

U.S. Telecom, Comments at p. 5, dated August 24, 2007: "Similarly, there is no reason to believe that mandating various forms of Lifeline outreach would positively impact subscriber rates among low-income consumers, and it is important for carriers and states to have the flexibility to target their outreach consistent with local needs."

5 US Telecom Comments, p. 5, dated August 24, 2007.

organizations and consumer groups who better know the need of each local and/or rural area and will be better able to develop and extend outreach of the Lifeline and Link-Up programs.[6] ETCs gloss over the fact that thus far the *status quo* has proven to be ineffective and ETCs are simply not providing adequate outreach of the program's availability in numerous states.[7]

Rate Counsel continues to support its Comments filed on August 24, 2007, which urge and encourage the adoption of federal rules that increase the income threshold to a minimum of 150% of the FPG, mandate automatic enrollment programs, and require minimum advertisement standards by ETCs to further promote and strengthen the success of these vital programs. Rate Counsel urges the Commission to dismiss the recommendations made by the ETCs, because it is glaringly clear that ETCs have not reached out to a vast majority of eligible households which the programs were intended to benefit. Rate Counsel urges the Commission to impose federal minimum regulations and reporting requirements to ensure that the benefits obtainable under these federal programs reach the 6.4 million[8] eligible low-income households who are currently without telephone service, and need this vital service, so that they do in fact receive the benefit and assistance available under these programs. The comments submitted by the parties in this

---

6 National Telecommunications Cooperative Association, Comments at pp. 1-2, dated August 24, 2007, stated that "regulation is unnecessary."… "Carriers have a strong financial incentive to advertise the Lifeline/Link-up services," and "Absent evidence of widespread violation of notification requirement, the Commission should permit carriers to continue to follow the guidelines and adopt their own compliance measure."

7 Twenty-three (23) states show participation rates of less than 20% in the program. *See* USAC Map of 2006 Lifeline Participation Rates by State, http://www.usac.org.

8 Belifante, Telephone Subscribership in the United States (Data through March 2007) (FCC July 2007) at Table 1. See Bureau Statistical Reports Internet site at http://www.fcc.gov/web/stats.

matter demonstrate that the *status quo* - *laissez faire* approach to implementation of these vital programs must not continue. To wit, Rate Counsel submits the following reply comments.

III. REPLY TO COMMENTS

A. ETCs MISQUANTIFY AND EXAGGERATE THE ECONOMIC IMPACT AGAINST THE BENEFIT THAT WILL RESULT TO ELIGIBLE LOW-INCOME HOUSEHOLDS THROUGH AN INCREASE IN THE ELIGIBILITY CRITERION TO 150% OF THE FEDERAL POVERTY GUIDELINES.

Rate Counsel echoes the concerns voiced in the comments submitted by various consumer advocate organizations such as the joint comments filed by the National Consumer Law Center and the Texas Legal Services Center and NASUCA, which urge definitive Commission action by increasing the default income-based criterion to 150% and by promulgating clear rules for carriers on the issue of outreach and advertisement. Unfortunately, the statistics provided by the Universal Service Administrative Company ("USAC") analysis for Lifeline program participation in 2006, are disturbing and mandate a more proactive agenda by the Commission. The analysis demonstrates that almost half the states have a program participation rate of less than 20% and only five states have over a 50% participation rate in the programs.[9] The data is alarming because as of March 2007, 6.4 million households did not have telephone service in their homes. Moreover, even though telephone penetration rates have fluctuated from 93.8% (2004) to 94.6% as of March 2007, the percentage of households without telephone service (6.9% to 5.4%) has remained higher than the levels of (4.7% and 4.9%)

---

[9] USAC map of 2006 Lifeline Participation Rates by State, http://www.usac.org (key Lifeline map) which shows 9 states with participation rates below 10%: AL,AR,DE,HI,LA,MD,NH,TN,WV; 14 states with participation rates between 10%-20%: AZ,FL,GA,IN,IL,KS,KY, MI,MO,MS,NY,PA,SC,VA; 20 states with participation rates between 20%-50%:CT,IA,ID,MN,NC,ND,NE,NM,NJ,OH,OK,OR,RI,SD,TX,UT,VT,WA,WI,WY; and only 5 states with a participation rate of over 50%: AK,CA,CO,ME,MT.

reported in 2002 and 2003.[10] The current telephone penetration ratio is simply unacceptable in today's society and it is incomprehensible when compared to the surge and current dissemination of technology which is spawning a similarly widening and disturbing communication gap in our nation known as the digital divide.

There is no question that elevating the eligibility criterion to 150% would enable the Lifeline/Link-Up programs to reach more struggling low-income families. Those in opposition to increasing the eligibility criteria offer no other solutions to closing the telephone penetration gap found among low-income households surveyed as per the FCC's most recent data and report on *U.S. Telephone Subscribership,* which demonstrates that only 93.55% of households with incomes between $20,000 and $24,999 have telephone service while the telephone penetration rate for households with incomes of $100,000 was 98%.[11] As observed in numerous recent studies, more striking, however, are the gaps in service between Caucasian, African-American and Hispanic households at the same income levels. At the lowest income levels, under $5,000, subscribership levels vary greatly: for Caucasians, it is 79% compared to 72.7% for Hispanics and 66.8% for African-American households. Caucasian households pass the 90% threshold at income levels around $12,500/year by contrast, African-American and Hispanic households don't reach the 90% level until household income reaches $20,000/year and don't reach the national telephone penetration level until $25,000/year (Hispanics) or $35,000/year (African-

---

[10] Belifante, *Telephone Subscribership in the United States* (Data Through March 2007) (FCC July 2007) respectively at Tables 3, Chart 1 and Table 1. See Bureau Statistical Reports Internet site at http://www.fcc.gov/web/stats.

[11] *Id.,* at Chart 4.

American). Overall, 95% of Caucasian households have telephone service while just 89.7% of Hispanic households and 87.7% of African-American.[12]

Moreover, while automatic enrollment is an effective way at increasing outreach, it alone is not enough. Expanding the income based criterion to 150% of the FPG is needed because there are low-income households that may not necessarily be enrolled in other public benefits programs. Likewise, as noted by NASUCA in its comments, "Maryland responded to increases in electric rates by opening up LIHEAP eligibility to households with 200% of the FPG and Ohio changed from 150% of FPG in 2004 to 175% for the 2007 program year."[13] Clearly, increasing the income-criterion to 150% would be in keeping with current public assistance program trends among several states across the nation, who have increased the income-eligibility criterion to further meet the needs of a growing number of lower-income families.

The strain and impact on the USF that opponents stress is exaggerated and misplaced and should be ignored. First, many states already have set the income-eligibility criterion for enrollment under their benefits programs at 150% or above of the FPG, therefore, adoption of the 150% criterion will narrow the disparity between households with the same income but receiving different benefits. Secondly, contrary to opponents' comments, and as evidenced by current data, the increase to 150% of the FPG would provide assistance to potentially over six million

---

12 *Social Stratification: The Digital Divide In North Carolina*, by Kenneth R. Wilson, Christa Reiser, Kelly Potter, East Carolina University and Jennifer S. Wallin, RTI International, www.ncsociology.org/sociationtoday and *A Digitally Divided Life,* www.edu-cyberpg.com .

13 NASUCA Comments, fn 21, at p. 9, dated August 24, 2007.

low-income and minority consumers who currently do not have telephone service or have insufficient funds to maintain telephone service. The higher income criterion would increase telephone penetration rates among growing lower-income households and further the programs' goal and purpose of providing universal service. Simply stated, at 135% of the FPG, the program deprives a substantial number of low-income American households from obtaining essential and vital telephone service. This is simply unacceptable and should not continue. Therefore, Rate Counsel recommends that the Commission impose a federal minimum of 150% of the federal poverty guidelines while allowing states the continued flexibility, if deemed necessary, to go above the set minimum.

B. ETCS' RECOMMENDATION THAT THE COMMISSION NOT IMPOSE FEDERAL MINIMUM OUTREACH REQUIREMENTS IN ADVERTISING IS MISPLACED AND WOULD LEAD TO CONTINUED UNDER UTILIZATION OF THESE VITAL PROGRAMS BY ELIGIBILE LOW-INCOME HOUSEHOLDS AND THWART THE GOAL FOR UNIVERSAL SERVICE.

Interestingly, one of the more neutral comments filed with the Commission in this matter came from TracFone Wireless, Inc., a provider of prepaid wireless service, serving over eight million customers nationwide, which was designated as an ETC for the limited purpose of providing special, temporary Lifeline service to displaced victims of Hurricane Katrina, through the Commission's Katrina Lifeline program.[14] TracFone supports the increase of the income-based criterion as permitting more eligible households to benefit from the program, while noting

[14] TracFone Comments, p. 4, dated August 24, 2007; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. §214(e)(1)(A) and 47 C.F.R. §54.20(i). 20 FCC Rcd 15095 (2005).

that less than 34% of the nation's Lifeline-eligible households participate in Lifeline,"[15] and "nationally about two-thirds of all eligible households do not have Lifeline service. In other words, TracFone rightfully questions why more than 96% of eligible West Virginia households or nearly 96% of eligible Arkansas households are not benefiting from the Lifeline program."[16] What is glaringly apparent from the statistics mentioned is that the current outreach and advertisement methods are simply not enough and are not working towards meeting the mission and goal of universal service for all Americans.

Rate Counsel supports and urges the Commission to formulate specific rules which would require ETCs to distribute informational flyers to residential dwellings, and public assistance agencies in their service areas and the use of non-English language materials in areas where specified percentages of the population speak other than English. In addition, ETCs should be required to expand outreach programs through the use of other media advertisement, such as posters on buses, schools, libraries, local newspapers and through public announcements through local cable service providers, and prior to any disconnection the ETC should be required to explain the Lifeline/Link-Up program to the customer prior to any termination of service. Rate Counsel notes that in comments filed by TracFone, the company "plans to advertise its Lifeline program on Spanish language stations in areas with substantial Spanish-speaking communities," and "will use its network of retail distributors to further promote its Lifeline

---

15 TracFone Comments at p. 4 and fn 6, dated August 24, 2007, citing to Lifeline and Link-Up, 19 FCC Rcd 8302 (2004) at Appendix K – Section 1: Baseline Information Table 1.A. Baseline Lifeline Subscription Information (Year 2002).

16 *Id.,* at p. 4; see also fn 8.

services, especially those retail vendors which are frequented by lower income consumers."[17] Qwest stated that it had engaged in similar advertising efforts which yielded mix results.[18] What is clear is that the future success of the Lifeline/Link-Up programs in reaching eligible low-income households should not be shouldered or borne alone by state agencies and consumer groups and organizations. ETCs must become more involved in the process than they have been willing to be thus far, and Commission rules will ensure that all parties are pulling their weight to increase the success of these programs. In addition, Rate Counsel believes that the Commission should impose rules that require ETCs to report the amount of money spent on outreach and agrees with the comments filed by TracFone[19] that ETCs should be held accountable for their failure to effectively promote these programs, particularly in problem areas throughout the country which exhibit a chronic and persistent low telephone penetration ratio among low-income households. Rate Counsel also notes and supports NASUCA's recommendation that federal requirements should not prevent states with their own USF programs from adopting more stringent requirements, and that if federal USF moneys are received, that ETCs should at least meet federal minimum requirements and guidelines.[20]

---

17 TracFone Comments, at p. 6, dated August 24, 2007.

18 Qwest Comments, at pp. 2-3, dated August 24, 2007. Rate Counsel notes that Qwests' efforts did yield an increase in enrollment in the target area, albeit not as high as expected by Qwest.

19 TracFone Comments at p. 5, dated August 24, 2007.

20 NASUCA Comments at p. 12, dated August 24, 2007.

C. THE COMMISSION SHOULD REQUIRE AUTOMATIC ENROLLMENT FOR LIFELINE AND LINK-UP PROGRAMS.

Rate Counsel urges the Commission to issue rules that require automatic enrollment. Although automatic enrollment alone does not suffice, as addressed above, it would further ensure that the Lifeline/Link-Up program reaches a greater number of eligible low-income households. Moreover, automatic enrollment would also prevent fraud and further streamline the verification process and eliminate confusion and possible hesitation by consumers as to eligibility under the programs. Lastly, mandatory automatic enrollment would allow for fairer treatment of consumers of similar incomes across state lines throughout the nation and would further ensure that all ETCs are equally offering and promoting Lifeline/Link-Up discounts within their service territories.

D. OTHER ISSUES DESERVE FURTHER EXPLORATION BY THE COMMISSION AS POTENTIAL ADD-ON FEATURES UNDER THE LIFELINE AND LINK-UP PROGRAMS.

Rate Counsel supports the recommendation made by NASUCA that call for expanding the Lifeline/Link-Up program to include funding for a nationwide "Community Voice Mail" ("CVM") program. The CVM program is an exciting, innovative and proven successful way to, as pointedly discussed by NASUCA, "help people in crisis and transition stay connected to the very tool they need most: a constant telephone number."[21] The CVM program is keeping within the true spirit behind universal service, and ensures that even those who are temporarily without

[21] NASUCA Comments at pp. 20, dated August 24, 2007.

phone service have at least some access to telephone service in order to stay connected to vital services and support. Community Voice Mail numbers are distributed based on demonstrated financial need, lack of reliable phone service, or pursuit of a goal for work, housing, healthcare, or safety from domestic violence. Once goals are achieved, the phone number is recycled to the next available subscriber. In this way, a single voice mailbox number can be used 2-3 times per calendar year. CVM is often the line between a job interview and a job offer, can help an apartment application become a place to live, keep parents connected to teachers, doctors, friends and family.[22] Moreover, it is not inconceivable that CVM clients will most likely transition to become program participants and recipients of Lifeline/Link-UP benefits as well as other traditional public assistance programs. To this extent expanding Lifeline/Link-Up to a nationwide CVM program seems only a natural extension and progression to providing universal service and a true lifeline to eligible low-income consumers.

IV. CONCLUSION

Rate Counsel respectfully recommends that the Commission increase the income-eligibility criterion to a minimum of 150% of the FPG, enact rules on outreach and advertising which also includes bridging language barriers, require automatic enrollment whenever possible, consider expanding the Lifeline and Link-Up programs to a nationwide "Community Voice-Mail" system as a natural extension of lifeline benefits, as well as enacting rules establishing reporting requirements for outreach efforts, targets and expenses and provide for accountability for ETC failures to effectively promote these programs within their service territories.

---

[22] http://www.cvm.org

Respectfully submitted,

RONALD K. CHEN,
NEW JERSEY PUBLIC ADVOCATE

KIMBERLY K. HOLMES,
ACTING DIRECTOR,
DIVISION OF RATE COUNSEL

By: *Maria T. Novas-Ruiz*

Maria T. Novas-Ruiz, Esq.
Assistant Deputy Public Advocate
Christopher J. White, Esq.
Deputy Public Advocate
Division of Rate Counsel

September 10, 2007.